

ORIGINAL

CLERK'S OFFICE  
CLERK

FEB 15 2005

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

*[Signature]* Clerk  
Deputy Clerk

TONY L. WARE, CEO and  
T. L. WARE BOTTLING  
COMPANY, INC.

Plaintiffs,

v.

FLEETBOSTON FINANCIAL  
CORP.,  
f/k/a BANKBOSTON CORP.,

Defendant.

Civil Action File

No. 1:05-CV-0426

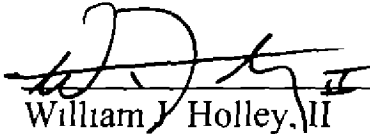
**MHS**

**NOTICE OF FILING ORIGINAL**  
**AFFIDAVIT OF MARTHA R. FRANCIS**

Defendant FleetBoston Financial Corporation hereby gives notice of filing the original of the February 10, 2005 affidavit of Martha R. Francis. FleetBoston Financial Corporation files this notice by special appearance while preserving all defenses and objections, including but not limited to, lack of personal jurisdiction and insufficient service of process.

Respectfully submitted,

**PARKER, HUDSON, RAINER & DOBBS LLP**

By:  \_\_\_\_\_  
William J. Holley, II

Georgia Bar No 362310

Nancy H. Baughan

Georgia Bar No. 042575

Michael D. Grider

Georgia Bar No 310473

1500 Marquis Two Tower

285 Peachtree Center Avenue, N.E.

Atlanta, Georgia 30303

(404)523-5300 (telephone)

(404)420-5549 (facsimile)

Attorneys for FleetBoston Financial Corporation



4 I know FBC(Del) to be a "placeholder corporation." In other words, while the entity was organized under Delaware law and registered in multiple states, including Georgia, the entity never transacted any banking business or held assets of any significant value. Contrary to the caption of Plaintiffs' Complaint, FBC(Del) is not the successor to BankBoston Corporation. Most important, FBC(Del) never held the assets of or ever was the successor in any way to the Fidelity Acceptance Corporation.

5 FBC(Del) was legally dissolved in the state of Delaware on July 13, 2004. A true and correct copy of the certified Certificate of Dissolution is attached hereto as Exhibit 1.

6 I am personally familiar with the application for withdrawal of FBC(Del)'s registration in Georgia. Attached hereto as Exhibit 2 (and in the same form included within Exhibit A to Plaintiffs' Complaint) are true and correct copies of FBC(Del)'s application for withdrawal of registration filed on July 21, 2004 with the Georgia Secretary of State and the Certificate of Withdrawal issued by the Georgia Secretary of State effective July 21, 2004. I am the "Rebecca Francis" identified in the application for withdrawal. My address for receipt of process is identified correctly on the application for withdrawal as "Bank of America, 50 Kennedy Plaza, 16<sup>th</sup> Floor, Providence, RI 02903."

7 For approximately 12 years prior to my employment by Bank of America, I was employed in Fleet National Bank's Legal Department. My duties and responsibilities caused me to have knowledge of the activities of FBC(Del) and its status as a "placeholder corporation." I know that from its inception in 1999 through July 13, 2004, FBC(Del) never actively engaged in the business of banking and never transacted business in Georgia. Moreover, I am certain that after its dissolution on July 13, 2004, FBC(Del) has not transacted business in any state.

8 I have been and am the person responsible for receiving service of process of legal papers  
upon FBC(Del) To the best of my knowledge and after a diligent search, FBC(Del) never  
received service of Plaintiffs' Complaint or any discovery requests

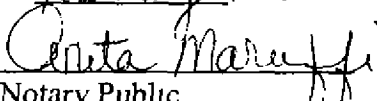
9 The first time I became aware of Plaintiffs' lawsuit (but not Plaintiffs' Complaint) was  
when I received a mailing from the chambers of Judge Bensonetta Tipton Lane of the Fulton  
Superior Court enclosing copies of a January 28, 2005 default judgment and a February 2, 2005  
Order signed by Judge Lane vacating the January 28, 2005 judgment The envelope in which the  
documents were received was saved and a true and correct copy is attached hereto as Exhibit 3

10 I did not receive a copy of Plaintiffs' Complaint until February 9, 2005

FURTHER AFFIANT SAYETH NOT

  
Martha R Francis

Sworn to and subscribed  
before me this 10<sup>th</sup> day  
of February, 2005

  
Notary Public

My Commission Expires 7-20-08 **ANITA MARUFFI**  
**NOTARY PUBLIC**  
(AFFIX NOTARIAL SEAL) MY COMMISSION EXPIRES JULY 20, 2008

# EXHIBIT 1

# Delaware

PAGE 1

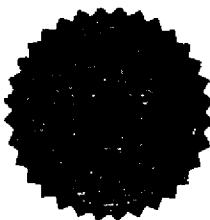
*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DISSOLUTION OF "FLEETBOSTON FINANCIAL CORPORATION", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF JULY, A D 2004, AT 1 25 O'CLOCK P M

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

3032309 8100

040512470



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION 3232856

DATE 07-14-04

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 01:51 PM 07/13/2004  
CERTIFICATE OF DISSOLUTION FILED 01:25 PM 07/13/2004  
SRV 040512470 - 3032309 FILE

OF

FleetBoston Financial Corporation

FLEETBOSTON FINANCIAL CORPORATION a corporation  
organized and existing under and by virtue of the General  
Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY

FIRST: That dissolution was authorized on July 12<sup>th</sup>,  
2004.

SECOND That dissolution has been authorized by all of  
the stockholders of the corporation entitled to vote on a  
dissolution in accordance with the provisions of subsection (c) of  
Section 275 of the General Corporation Law of the State of  
Delaware

THIRD That the names and addresses of the Directors  
and Officers of FleetBoston Financial Corporation are as follows.

D I R E C T O R S

<u>NAMES</u>	<u>RESIDENCES</u>
Victor A. Duva	847 Hillbrook Lane Langhorne, PA 19047
Kenneth J. Uva	111 Eighth Avenue New York, NY 10011
C. M. Denny	127 Deer Run Road Wilmington, DE 19734



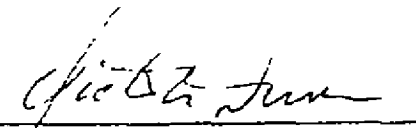
O F F I C E R S

<u>NAMES AND OFFICES</u>	<u>RESIDENCES</u>
VICTOR A. DUVA - President	847 Hillbrook Lane Langhorne, PA 19047
Kenneth J. Uva - Vice President, Secy. & Asst. Treasurer	111 Eighth Avenue New York, NY 10011
C. M. DENNY - Vice President, Treasurer & Asst. Secretary	137 Deer Run Road Townsend, DE 19734

IN WITNESS WHEREOF, said FLEETBOSTON FINANCIAL CORPORATION has caused this certificate to be signed by VICTOR A DUVA its President this 13th day of July, 2004

FleetBoston Financial Corporation

By

  
VICTOR A. DUVA  
President

# EXHIBIT 2



Cathy Cox  
Secretary of State

**CORPORATIONS DIVISION**  
Suite 315 West Tower  
2 Martin Luther King Jr. Dr  
Atlanta, Georgia 30334-1530  
(404) 656-2817

CT CORPORATION SYSTEM  
JENNIFER SCHWARTZ  
1209 ORANGE ST  
WILMINGTON, DE 19801

Docket Number : 041890774  
Control Number : K919525  
Date Filed : 05/11/1999  
Jurisdiction : DELAWARE  
Amount Due : \$20.00  
Print Date : 07/07/2004  
Form Number : 238

**APPLICATION FOR WITHDRAWAL  
OF**

**FLEETBOSTON FINANCIAL CORPORATION  
A FOREIGN PROFIT CORPORATION**

The above named corporation is not transacting business in Georgia and hereby surrenders its authority to transact business in this state. The corporation revokes the authority of its registered agent and consents that service of process may be made on said corporation by service upon the Secretary of State. The address listed below is the street address where the corporation may be served legal process. The corporation also acknowledges its legal obligation to notify the Secretary of State of any change in mailing address.

Complete and return all copies of this form with a check made payable to the Secretary of State for the amount due above which represents the filing fee and (if due) the annual fees.

**LEGAL SERVICE ADDRESS:**

Rebecca Francis

Bank of America

50 Kennedy Plaza, 16th Floor Providence, RI 02903

Signature of Corporate Officer

Date

*Rebecca Francis*

7/15/04

SECRETARY OF STATE  
JUL 21 PM 2:33  
CORPORATIONS DIVISION

CORPORATION NAME

ADDRESS

CITY

STATE ZIP

FLEETBOSTON FINANCIAL CORPORATION

1209 N ORANGE ST

WILMINGTON

DE

198011120

**Secretary of State**  
**Corporations Division**  
**315 West Tower**  
**#2 Martin Luther King, Jr. Dr.**  
**Atlanta, Georgia 30334-1530**

DOCKET NUMBER : 042080698  
CONTROL NUMBER : K919525  
DATE AUTHORIZED: 05/11/1999  
JURISDICTION : DELAWARE  
EFFECTIVE DATE : 07/21/2004  
REFERENCE : 0077  
PRINT DATE : 07/26/2004  
FORM NUMBER : 127

C T CORPORATION SYSTEM  
RUDENE REMBERT  
1201 PEACHTREE STREET, NE  
ATLANTA, GA 30361

**CERTIFICATE OF WITHDRAWAL**

I, Cathy Cox, the Secretary of State and Corporations Commissioner of the State of Georgia, do hereby certify under the seal of my office that

**FLEETBOSTON FINANCIAL CORPORATION**  
**A FOREIGN PROFIT CORPORATION**

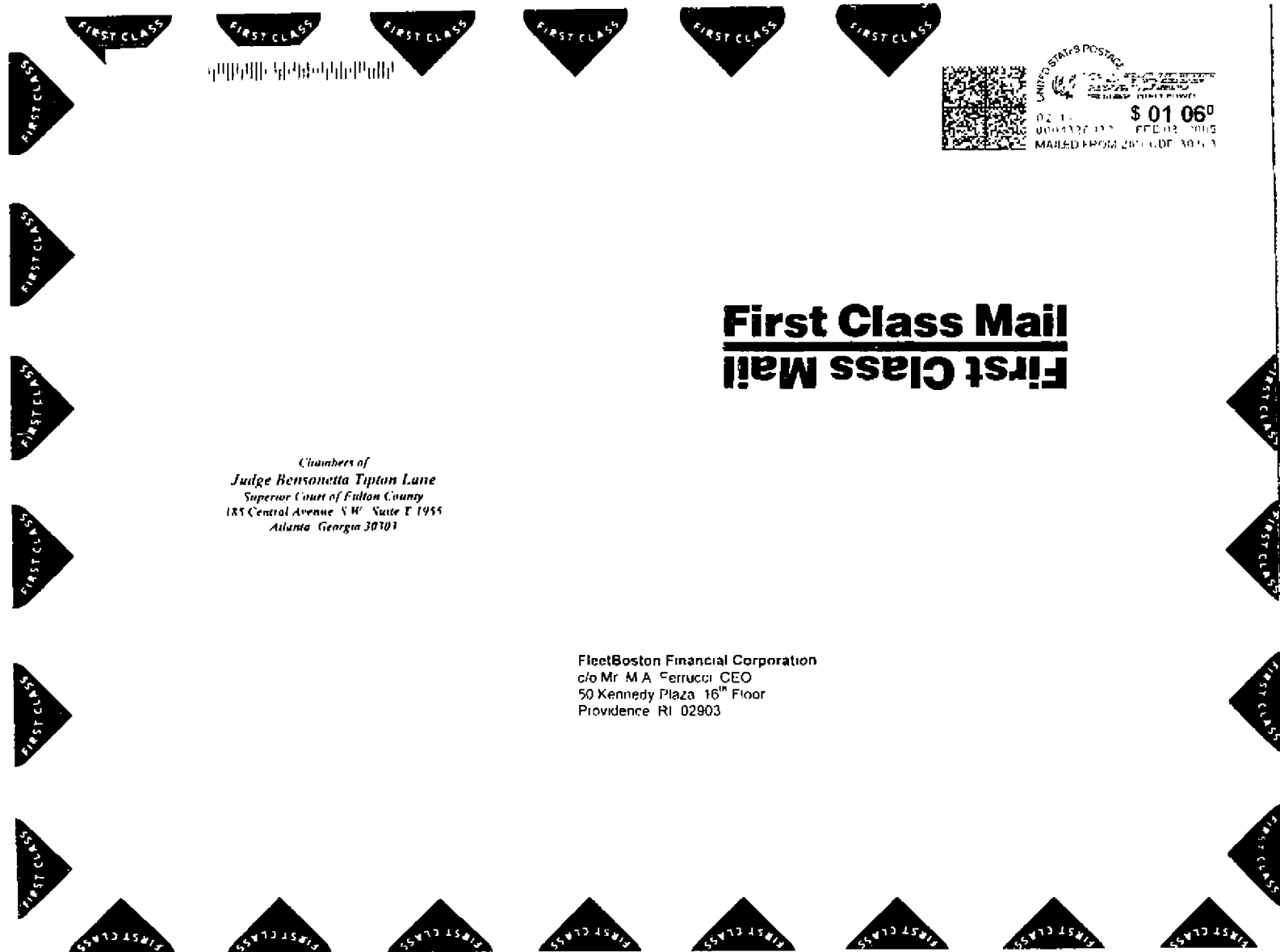
incorporated under the laws of the jurisdiction stated above and authorized to transact business in Georgia on the date stated above, has filed an application for withdrawal in the Office of the Secretary of State and has paid the required fees pursuant to Title 14 of the Official Code of Georgia Annotated and the Rules and Regulations promulgated thereunder. Therefore, the authority of said corporation to transact business in Georgia is hereby terminated. Attached hereto is a true and correct copy of said application.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on the date set forth above.



Cathy Cox  
Secretary of State

# EXHIBIT 3



*Chambers of*  
**Judge Bensonetta Tipton Lane**  
*Superior Court of Fulton County*  
135 Central Avenue S.W. Suite T 1955  
Atlanta, Georgia 30303

FleetBoston Financial Corporation  
c/o Mr. M.A. Ferrucci, CEO  
50 Kennedy Plaza, 16th Floor  
Providence, RI 02903

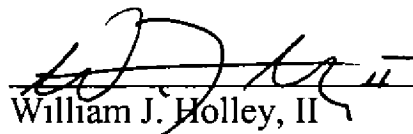
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing **NOTICE OF FILING ORIGINAL AFFIDAVIT OF MARTHA R. FRANCIS** upon all parties to this matter by causing to be deposited in the U.S. Mail, proper postage prepaid, a true copy of same addressed as follows:

Michael R. Johnson, Sr. (**also served via courier**)  
Johnson & Associates, P.C.  
340 West Peachtree Street, N.E.  
Suite 200  
Atlanta, Georgia 30308

Dr Tony L. Ware, PhD, JD  
Post Office Box 150524 - Dept 0227  
Atlanta, Georgia 30315

This 15<sup>th</sup> day of February, 2005.

  
William J. Holley, II